



United States Department of the Interior

FISH AND WILDLIFE SERVICE

FISH AND WILDLIFE SERVICE

911 NE. 11th Avenue

Portland, Oregon 97232-4181

AUG 21 1997

IN REPLY REFER TO:

VENTURA, CA

AUG 18 1997

MEMORANDUM

To: Deputy Regional Director

From: Assistant Regional Director, Southern California Ecoregion

Subject: Findings and Recommendations on Issuance of an Incidental Take Permit for the Santa Cruz Long-toed Salamander by Seascope Uplands Joint Venture in Santa Cruz County, California (PRT-749374)

I. DESCRIPTION OF PROPOSAL

Shelter Systems, Incorporated and Lampert Properties (hereafter referred to as Seascope Uplands Joint Venture or the applicants) have applied to the Fish and Wildlife Service (Service) for a 30-year permit under section 10(a)(1)(B) of the Endangered Species Act of 1973 (16 U.S.C. 1531-1544, 87 Stat. 884), as amended (Act), for incidental take of the endangered Santa Cruz long-toed salamander (*Ambystoma macrodactylum croceum*) (salamander) associated with residential grading, construction, and occupancy. The applicants propose to develop 107 single-family residential lots on about 45 acres of an approximately 190-acre site near the City of Aptos, in Santa Cruz County, California. The site is adjacent to residential development on the west, Bonita Drive to the northeast, San Andreas Road to the east, and an undeveloped area to the northwest. The proposed development would result in the loss of habitat and could involve the take of the federally-listed endangered salamander.

Seascope Uplands Joint Venture has developed a Habitat Conservation Plan (HCP) in support of its application to the Service for an incidental take permit. The HCP is designed to minimize and mitigate the take of salamanders and their habitat and to further the conservation of the species. The HCP outlines measures to ensure that these actions are carried out in a timely manner, during implementation of the proposed residential development. The HCP and its accompanying Implementation Agreement (IA) delineate the responsibilities of the Service, Seascope Uplands Joint Venture, and the Center for Natural Land Management.

The residential development would avoid most of the sensitive habitat areas of the salamander. To mitigate unavoidable take of the salamander, Seascope Uplands Joint Venture would establish a perpetual reserve for the salamander, enhance and maintain the existing breeding pond in perpetuity, develop additional breeding ponds, protect and maintain habitat for other sensitive

species on site, and provide a management endowment and fee-assessment to fund perpetual implementation of the HCP. The Center for Natural Land Management would manage the reserve.

ANALYSIS OF EFFECTS

The project would directly affect an estimated 40 acres of terrestrial habitat suitable for the salamander. Approximately 5 additional acres of habitat would be temporarily disturbed and reclaimed as potentially viable habitat. No habitat that is essential to the survival of the salamander would be lost on site. The permanent loss of habitat would occur only within adjacent primary, secondary, or marginal habitat (as defined in the HCP). Project grading may affect as much as 2 percent of adjacent primary habitat, 10 percent of adjacent secondary habitat, and 29 percent of adjacent marginal habitat. Of the approximately 78 acres total of adjacent primary and adjacent secondary habitats found on the site, up to 6 acres may be disturbed by grading.

The proposed permit would authorize incidental take of all salamanders, through harassment and mortality, on the 40 acres of habitat that would be permanently lost and on the 5 acres that would be temporarily disturbed, then reclaimed. An unknown number of individual salamanders may be incidentally taken as a result of project grading, construction, and residential occupancy.

To minimize and mitigate these effects, approximately 147 acres (77 percent) of the site would be set aside through a conservation easement and managed in perpetuity for the salamander. The existing breeding pond on site would be maintained and additional breeding ponds would be developed for the salamander. In addition, a road was eliminated from the project design and another road was changed to emergency use only. Tunnels under roads would be designed to facilitate migration of salamanders. During project grading and construction, a barrier would be erected between the construction area and areas to be left undisturbed; vegetation would be cleared manually from habitat occupied by salamanders and any individuals found would be salvaged and released within the reserve.

II. PUBLIC COMMENT

The Service published a notice of receipt of an application and availability of an Environmental Assessment (EA) for the issuance of an incidental take permit for the proposed action in the Federal Register on October 29, 1991 (56 FR 55684). The Federal Register notice, HCP, EA, and IA were mailed to government agencies, private organizations, and individuals, including the California Department of Fish and Game, U.S. Army Corps of Engineers, County of Santa Cruz, California Coastal Commission, The Nature Conservancy, and the Sierra Club. The Service received 4 letters during this initial 30-day review period. In response to these comments, the draft HCP and draft EA were subsequently revised to include additional mitigation and a more in-depth analysis of the alternatives considered. On October 30, 1992 (57 FR 49191), the Service re-opened the public review period for 30 days to allow all interested parties to comment

on the changes to the HCP and EA. No comments were received during the second public comment period; however, several letters were received after this period from people who had not previously commented. In response to these late comments, and following certification of the Environmental Impact Report (EIR) by Santa Cruz County, the HCP and EA were revised and finalized. Final changes were minor and mostly involved clarification of wording, reformatting of the IA, and additional protection for the salamander; these changes did not significantly alter the analysis of effects in the HCP or EA.

The following discussion addresses the issues raised in the comment letters received from 1991 through 1994. Although the Service has reviewed all correspondence, the Service has not addressed comments that requested action of, or claimed omissions by, Santa Cruz County or parties other than the Service involved with review of the proposed action. Letters from the applicants and the biologist who conducted the survey for the salamander on-site requested that the permit be issued; no response to these comments is necessary.

1. The commentors requested notification of 1) designation of critical habitat for the salamander, 2) release of the biological opinion for the Seascapes permit, 3) revisions to the Seascapes HCP, 4) revision of the recovery plan for the salamander, and 5) action taken by the Service regarding the Seascapes HCP and EA.

Comment noted. The Service will notify the commentors as requested, at the appropriate time for items 2 through 5. Should the Service designate critical habitat for the salamander in the future (see response 4), the Service also will notify the commentors.

2. A new draft HCP and EA should be circulated for public review because public and private parties were not adequately informed of the comment period. One commentor, a private attorney, asserted that Santa Cruz County was unaware of the October 1992 public comment period and the Coastal Commission received its notice late.

By publishing two notices in the Federal Register, the Service attempted to involve the public in review of the HCP and EA. We cannot, however, know every individual that may have an interest in the project. Santa Cruz County and the Coastal Commission were aware of the public review periods and commented on the HCP during its development. Although not required, the Service accepted comments outside the public comment period from all groups and individuals.

The HCP has been revised to address the substantive concerns of Santa Cruz County and other commentors. The final HCP is consistent with the final EIR for the project. An additional review period is not warranted because 1) the Service has accepted and responded to all comments received, and 2) the substantive objections raised concerning the issuance of the section 10(a)(1)(B) permit have been addressed in the final HCP and the final EIR. The Service will notify commentors of its final action, and make its decision documents and the final HCP and EA available to those who requested them and to others upon request.

3. Ruth's studies of salamanders on the Seascope site and adjacent property, conducted during 1986 through 1989 and 1993, were not made available to the public. The HCP only addresses the earlier study, which was not peer reviewed. The HCP should be recirculated for public comment after it has been appended with both studies and revised to reflect the 1993 study.

Ruth's report for the 1986 through 1989 study was available from the Service to anyone upon request. The 1993 study was conducted by Ruth for the owner of the property adjacent to the Seascope Uplands site. The information collected during that study is the property of the landowner and has not been made available to the Service. In making its decision on the proposed incidental take permit, the Service has used the best available scientific information, including a study by Ruth on the Seascope Uplands site.

4. The Service has not designated critical habitat for the salamander. Without designation of critical habitat, a determination of impact on the salamander cannot be made and incidental take permits cannot be issued. The commentor states that the Service considers the essential and adjacent primary habitats, as identified by Ruth, to be "critical habitat." The commentor also asserts that adjacent secondary habitat, as well as essential and adjacent primary habitat, could be critical habitat.

The salamander was listed in 1967 prior to the requirement to designate critical habitat at the time of listing. Critical habitat may be established for those species now listed as threatened or endangered for which no critical habitat has heretofore been established. Service staff working with this species have not believed such a designation would provide any additional benefits to the species and have not initiated any rules to propose critical habitat. No one has petitioned the Service to designate critical habitat for the species. If petitioned, the Service would consider designation of critical habitat for the salamander, in accordance with Section 4 of the Act.

"Critical habitat" is defined in Section 3 of the Act as those specific areas either within or outside of the geographic area occupied by a species at the time it is listed on which are found those physical or biological features 1) essential to the conservation of the species and 2) which may require special management considerations or protections. The requirement to designate critical habitat applies only to the extent that the Service determines that designation would be prudent and determinable. The Act does not require that critical habitat be designated for a species before the Service can issue an incidental take permit for the species. The regulatory processes of designating critical habitat and issuing incidental take permits are distinct and independent of one another. The Service has never considered Ruth's habitat categorizations as a substitute for critical habitat designation; however, the Service did consider Ruth's opinion of the value of these habitat areas to the salamander in its evaluation of the proposed action.

The Service's determination of whether the Seascope HCP meets the criteria specified in section 10(a)(2) of the Act for issuance of incidental take permits, and in particular whether issuance of the permits is likely to appreciably reduce the likelihood of the survival and recovery of the salamander, will take into account the effect of the permit on the habitat of the species. An

action may be found to jeopardize a species through destruction or adverse modification of its habitat, regardless of whether the habitat has been formally designated as "critical." Thus the fact that critical habitat has not been designated for this species will not prevent the Service from evaluating the effects of the HCP on the species' habitat. To issue an incidental take permit for the salamander, the Service must find, as one of the permit issuance criteria, that the impacts of the plan on the species' habitat will not appreciably reduce the likelihood of the survival and recovery of the species in the wild.

5. The recovery plan for the salamander was not available to the public.

The recovery plan was available to anyone who requested it.

6. The HCP incorrectly states that the distance between the Seascope property and Valencia Lagoon is two to three miles; actually it is a quarter of a mile, well within the dispersal distance of the salamander. The HCP should be changed to facilitate migration of salamanders between the Seascope property and Valencia Lagoon.

The actual distance between the Seascope property and Valencia Lagoon is approximately one mile. Neither the project proponents nor the Service have the authority to ensure that migration routes for the salamander are secured between these locations, since parcels located in the migration route are owned by persons other than the permit applicants. This issue would need to be addressed as a component of a regional habitat conservation plan. While the Service encourages such comprehensive planning, we cannot mandate it.

7. Under-the-road migration tunnels proposed as movement corridors for the salamander may not be effective.

Although the Service initially shared this concern, one road that would have crossed migration routes of the salamander has been completely eliminated from the project design. A second road has been designated as an emergency access road only. For mortality to salamanders to occur on this route, an emergency would need to occur at night, during a rainstorm, and most likely in the winter, when individuals would be moving above ground. Therefore, migration tunnels would not be needed on the most crucial roads and have been eliminated. Some migration tunnels would be installed in areas that are not currently considered valuable salamander habitat, in the event that the species becomes more common at these sites in the future. Monitoring would determine if the species used these tunnels.

8. An environmental impact statement (EIS) should be prepared for the following reasons:

- a) As the first habitat conservation plan for the salamander, issuance of an incidental take permit is precedent-setting.

- b) Run-off bearing contaminants from the ridge roads will drain towards and have a significant impact on the breeding ponds of the salamander.
- c) The effect of the project on critical habitat of the salamander has not been determined. Loss of 18.5 acres (21.5 percent) of environmentally sensitive habitat is a significant impact on the salamander population and the species as a whole.
- d) The proposed project conflicts with adopted local land use plans.
- e) The EIR found extensive significant environmental impacts from residential development. The HCP and residential development are the same project.

The Service's Finding of No Significant Impact includes the reasons why an EIS is not being prepared. With regard to the specific comments above:

- a) Although the habitat conservation plan would be the first for this species, the Service has issued incidental take permits for other species with similar habitat conservation plans. The action of issuing an incidental take permit is not precedent-setting.
- b) The road along one ridge has been eliminated from the project design. A second ridge line road will be used for emergency purposes only and thus would likely contribute only very small amounts of contaminants from vehicles.
- c) See response to comment 4 with regard to critical habitat. No essential habitat (as defined by Ruth) will be affected. Up to six acres (7 percent) of the 90 acres of adjacent primary and adjacent secondary habitats found on site may be disturbed by grading. This take will be mitigated by efforts to improve habitat and sustain in perpetuity the salamander population on site. The net effect will not result in significant adverse impacts to the population on-site or to the species as a whole. In fact, the Service anticipates that implementation of the HCP's management program will contribute to the recovery of the species.
- d) The Service's proposed action, issuance of a section 10(a)(1)(B) permit, is consistent with local land use plans. The Service has ensured consistency with the Santa Cruz County Sensitive Habitat Protection Ordinance, the Local Coastal Plan, and the Federal Coastal Zone Management Act (16 U.S.C. §1451 et seq.). Santa Cruz County has approved the proposed development as it is currently designed. The County's approval was appealed to the California Coastal Commission, which found that no substantial issues existed and upheld the decision. Accordingly, the Coastal Commission has declined to assert its jurisdiction for Federal consistency determination. With these actions by local agencies, the Service believes that issuance of the section 10(a)(1)(B) permit would not be inconsistent with local land use plans.

e) The final EIR concluded that the significance of all impacts, with the exception of those impacts related to noise and schools, would be mitigated to a level of less than significant. However, the Santa Cruz County Board of Supervisors approved the project and found that current law in the State of California (Government Code 65996) prohibits local agencies from denying a residential development project solely because of its impact on school facilities and limits the amount of the school impact fee that can be imposed on the residential development by a local agency. The applicants will partially offset this impact by paying the maximum school fee allowed by State law. Since it is expected that full mitigation for school impacts will be accommodated by the State, the Service concludes that impacts on schools will be mitigated to less than a level of significance.

The final EIR also found that short-term noise impacts on adjoining residences of Dolphin Drive and Vista Del Mar and on future project site residences would be a significant unavoidable impact. However, the Santa Cruz County Board of Supervisors found that the mitigation incorporated into the project approval would reduce noise impacts to a less than significant level. Mitigation includes restricting construction activity to weekdays between 8 a.m. and 5 p.m. and clearly posting these restrictions, ensuring that all internal combustion engines are fitted with mufflers and that compressors are quieted, and appointing a disturbance coordinator who would be responsible for receiving and responding to complaints regarding construction.

The Santa Cruz County Board of Supervisors also found that the approval of the project was supported by the creation of the reserve for the salamander. In addition, the Board of Supervisors found that the approval of the 107-lot development assisted Santa Cruz County in meeting its responsibilities under the stipulation for judgement of Superior Court Case No. 50142, entered on July 20, 1987, to act in good faith regarding application for and approval of a reasonable level of development for the Seascaple Uplands, consistent with Santa Cruz County regulations and environmental constraints.

9. Two commentors noted that the HCP and incidental take permit should be consistent with the EIR; they questioned whether the Service and Santa Cruz County coordinated development of the EIR and the HCP. Santa Cruz County requested that the Service delay issuance of the permit until the EIR was completed.

The Service and Santa Cruz County have coordinated development of the EIR and HCP. In a letter dated November 22, 1991, Santa Cruz County provided information regarding its review process for the proposed development, and indicated some differences could exist between biological recommendations made by the Service and the County's consultants. Santa Cruz County also requested that the Service defer action on the incidental take permit until the County had completed its review. The HCP was subsequently modified to address Santa Cruz County's concerns. The EIR was completed by Santa Cruz County in 1994. The final HCP is consistent with the final EIR for the project.

10. The EIR and HCP do not address birds and rare plants. One commentor noted that the proposed action would affect three species of locally unique plants, red fescue, junegrass, and California melica.

The project was redesigned to avoid and to include a 50-foot buffer around the single population of the rare Gairdner's yampah that was discovered on-site. The final EIR notes that several lots and a road would be deleted or redrawn to avoid areas containing sensitive plants. The final project design includes 147 acres of natural open space and restoration of areas that are currently disturbed. These measures are adequate to conserve habitat for rare plants and for resident and migratory birds on-site. (See response to comment 19.)

11. The analysis in the EIR regarding the significance of road kills on Road B-1 is flawed.

Road B-1 has been eliminated from the project design.

12. The pond constitutes a hazard to children.

The HCP states that the ponds will be fenced to protect the pond from illegal entry and for public safety.

13. The HCP and EA do not analyze why loss of some habitat of the salamander is acceptable.

Habitat loss for the salamander is quantified in the HCP and EA. The significance of this habitat loss is discussed in the Service's biological opinion and its Finding of No Significant Impact. Although these documents do not specifically state what constitutes an "acceptable" amount of habitat loss, the HCP and EA discuss the potential alternatives that are available regarding development of the property. Both documents note that, without maintenance, the pond at Seascape Uplands would fail as breeding habitat for the salamander because the berm holding the water would collapse or siltation would eventually fill in the pond. Failure of the pond to hold water would eventually lead to the extirpation of the salamander on-site. The funding generated by the development of a portion of a site, that is separate from the area containing the pond, would allow for the long-term maintenance of the pond and the salamander at the site. Therefore, the overall analysis of the alternatives clearly indicates that maintenance of a breeding pond is more important to the survival of the salamander at the Seascape Uplands than preservation of its entire upland habitat.

14. The HCP does not consider the relationship between the proposed new breeding pond and salamander use of the surrounding area if the pond is "successful." Salamanders may begin to use areas of the site that they currently do not use. The permit applicants are proposing residential development in areas that may become essential habitat.

One of the goals of the HCP is to improve the habitat quality for salamanders on-site. If the numbers of salamanders increase and the area which they currently occupy expands, the Service would consider the HCP to be successful.

15. The HCP does not consider a reasonable range of alternatives, such as avoiding all sensitive habitat or eliminating the ridge road. The HCP fails to consider alternatives analyzed in the draft EIR.

The Service believes that the HCP contains a reasonable range of alternatives. In addition to the proposed action, the HCP considers the no action alternative (no incidental take permit), a no take/no development alternative (public purchase of the site), and an increased take alternative (1985 specific plan). The draft EIR considers three alternatives. The EIR's no project alternative is equivalent to the no action alternative in the HCP. The draft EIR's proposed and mitigated alternatives entail a greater degree of adverse effects to the salamander and other natural communities than the proposed project and final HCP. Therefore, the Service believes that further evaluation of these alternatives is not warranted. Finally, Santa Cruz County considered an alternative site in the draft EIR that analyzed the development of an area in the vicinity of the proposed project site that could support the acreage of the proposed development if all the lots were continuous. The Service did not analyze this alternative because the applicants for the section 10(a)(1)(B) permit, under whose direction the HCP was developed, does not own the alternative site; consequently, its use for the proposed project was deemed unlikely. The proposed project alternative for the HCP, which corresponds to the development that has been approved by Santa Cruz County, avoids all of the most sensitive habitat of the salamander and the Gairdner's yampah (a rare plant) and does not contain the ridge road.

16. One commentor raised specific questions regarding the causes and consequences of permit revocation; for example, would the development be removed if the landowner fails to meet its obligations?

The Service would seek to remedy any situation where the landowner failed to meet its obligations as detailed in the HCP and IA, and in the regulations to the Act. The IA establishes procedures to ensure all obligations of the parties will be met. The HCP and IA require monitoring to correct for any problems in maintaining the salamander population on site. Although the Service does not envision the situation in which facilities would be removed in response to a failure on the part of landowner to meet obligations of the HCP, the exemption of the incidental take would lapse and leave the landowner vulnerable to a section 9 take violation.

17. The concept that habitat at the Seascape Uplands is degraded does not seem consistent with the large numbers of salamanders found on-site.

Some of the hillsides above the breeding pond have been damaged by unauthorized off-road vehicle use and have been invaded by non-native pampas grass. These areas may not support salamanders in the same densities as the undisturbed oak woodland habitat on site.

18. Lights from houses near habitat of the salamander may be a problem.

Most of the proposed houses on site are located in areas that salamanders do not frequent. Therefore, lighting from these houses should not constitute a problem for the species. If the area inhabited by salamanders increases as a result of improved management, some potentially suitable habitat may not be available because of lighting. However, the inability of salamanders to use these areas would not be considered a significant impact.

19. The removal of the eucalyptus trees may adversely affect monarch butterflies, raptors, and owls.

The final EIR notes that several lots would be restricted or relocated to avoid eucalyptus trees used by monarch butterflies. The eucalyptus groves will be dedicated as open space and maintained under the provisions of the HCP. The HCP has been clarified on this point. A raptor nest found in the eucalyptus grove near the existing kiosk will be monitored for use prior to removal of the grove. Trees will not be removed if the nest is being used until after the young have fledged. The remaining groves on the project site should provide suitable nest sites for raptors and owls.

20. The relationship between protecting habitat of the salamander and removal of weedy species is unclear.

Salamanders seem to prefer habitat covered by specific plant communities. Weedy species are generally aggressive colonizers and can displace the native plants found within the habitat of the salamander.

21. Grassland, where much of the development is proposed, may be undervalued as habitat for the salamander. Native grasslands should not be converted to shrubs to benefit the salamander. The HCP fails to discuss whether conversion of grasslands to trees and shrubs is consistent with the Local Coastal Plan that protects such areas from inappropriate uses.

The final EIR and HCP note that the native grasslands will be maintained as grasslands. The County of Santa Cruz and the California Coastal Commission both have determined that the final HCP is consistent with the Local Coastal Plan.

22. The HCP calls for planting oaks within coastal scrub habitat, a sensitive habitat in the Local Coastal Plan.

Concerns regarding coastal scrub habitat have been addressed as evidenced by Santa Cruz County's approval of the project and the Coastal Commission's January 31, 1995, determination that no significant issues with respect to coastal resources were raised by the project. The HCP has been modified to maintain the natural communities that occur on-site.

23. The temporary loss of habitat may result in long-term impacts. The HCP has no standards to assess the success or failure of reclamation efforts.

The habitat types at the Seascope Uplands site should not pose any particular difficulty for restoration. The goal for reclamation of the disturbed area is to reproduce habitat similar to the appropriate surrounding natural communities. The managing entity will oversee and correct problems in the restoration effort as part of the long-term management of the site. The restoration plan notes that monitoring will occur for the first five years. During this time, at least 80 percent of the prescribed number of plants must survive within a given restoration area for the restoration to be considered successful. Plants will be replaced, as necessary, during the five-year monitoring period to ensure that the survival goal is achieved.

24. The HCP for the salamander may have significant impacts on other wildlife, resulting in take of such species or other adverse consequences.

Take only applies to species listed as threatened or endangered under the Endangered Species Act. The salamander is the only federally listed species known on site.

The HCP contains numerous measures that are intended to enhance wildlife habitat within the 107-acre reserve area, including removal of exotic species, pond creation and management, and restoration with native plant species. Therefore, although mortality or injury will occur to the wildlife occupying the approximately 45 acres that will be developed, the overall objective of the planning process, through both the HCP and EIR, has been to improve overall habitat quality where possible.

The commentor should also note that the HCP alone does not allow the proposed action to proceed. If the salamander were not present on-site, Santa Cruz County's EIR process still would have approved the Seascope residential development project. Consequently, implementation of the HCP will not, in and of itself, cause significant impacts to other species.

III. INCIDENTAL TAKE PERMIT CRITERIA - ANALYSIS AND FINDINGS

A. Criteria

1. The taking of the listed species will be incidental.

The take will be incidental to the otherwise lawful construction of the Seascope Uplands Joint Venture Project.

2. The applicants will, to the maximum extent practicable, minimize and mitigate the impacts of taking listed species.

The HCP and IA, developed by the applicants in coordination with the Service, minimize and mitigate incidental take of the salamander to the maximum practicable. The mitigation program is fully described in the HCP. Most of the high quality habitat for the salamander would be avoided during construction; construction that occurs within its habitat would be timed to allow individual animals to migrate from the work areas. The applicants also would establish a 147-acre reserve for the salamander in perpetuity, provide a long-term endowment for management and monitoring, enhance presently degraded habitat and existing migration corridors, maintain the existing breeding pond, and develop two new ponds. The objective of securing and enhancing the habitat is to set aside sufficient habitat of the salamander at the Seascope Uplands to sustain a viable breeding population in perpetuity.

3. The applicants will ensure that adequate funding for the HCP will be provided.

The HCP and IA specify the funding mechanisms provided by the proponent. No take will be authorized until funding mechanisms are secured. The applicants will provide \$300,000 to the Center for Natural Land Management, as an endowment, to be used for funding the long-term management of the reserve. The Center for Natural Lands Management will place the monies in an interest bearing account with the accrued interest providing annual operating costs for management of the secured parcel. In addition, each individual homeowner will pay an annual assessment of \$132 per year to augment the endowment fund. The cumulative annual funding generated by the endowment and the homeowners assessment is expected to average around \$27,000 per year. The applicants will also pay the direct costs of enhancing presently degraded habitat and existing migration corridors, for maintaining the existing breeding pond, and for monitoring development activities.

4. The taking will not appreciably reduce the likelihood that the species will survive and recover in the wild.

The Act's legislative history established the intent of Congress that this issuance criteria be identical to a finding of "no likely jeopardy" under section 7(a)(2) of the Act (see 50 CFR 402.02). Approval of the proponent's permit application has been reviewed by the Service under section 7 of the Act. In a biological opinion, which is attached hereto and incorporated by reference, the Service concluded that the approval of the permit application by Seascope Uplands Joint Venture would not be likely to jeopardize the continued existence of the salamander.

5. Other measures, as required by the Director of the Service, have been met.

The HCP and IA incorporate all elements necessary for the issuance of the permit, including procedures to deal with unforeseen circumstances.

6. The Director of the Service has received the necessary assurances that the plan will be implemented.

Signing of the IA by all parties will ensure that the HCP will be implemented, including creation of an endowment account before ground breaking.

B. Alternatives

More detailed descriptions and analyses of the following alternatives are contained in the HCP and EA.

No Project Alternative. Under this alternative, the proposed project would not occur and the incidental take permit would not be issued. This alternative would not be consistent with the goals of the landowner. Additionally, without the restoration of habitat, including the maintenance of the existing pond and control of exotic plant species, the existing habitat of the salamander on-site would continue to degrade.

1985 Specific Plan Alternative. In 1985 the Aptos Seascapes Corporation proposed a 551-unit development on the project site, which would have resulted in the permanent loss to development of 104 acres of the approximately 190-acre site. Although the existing breeding pond was not to be disturbed by development, the plan did not adequately reflect biological constraints of the site. After a subsequent review under the California Environmental Quality Act, the County of Santa Cruz approved the proposed development of 107 units by Seascapes Uplands Joint Venture.

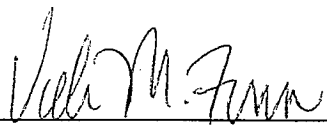
Public Purchase Alternative. Under this alternative, the site could be purchased by a public agency or private land trust agency, such as The Nature Conservancy or Trust for Public Lands, and maintained as a reserve. Under this alternative, no take of the salamander at the Seascapes Uplands would occur, assuming the land would be managed for the species. According to the landowner, no public agency has sought to purchase the property. If funds were to become available solely for purchase of the site, additional moneys would be needed to protect and manage the site. In the short term, the salamander could survive on the site with minimal management; however, after a few years, erosion and siltation problems at the breeding pond and the spread of invasive exotic plants would need to be addressed. In addition, illegal off-road vehicle use of the site would have to be controlled.

IV. GENERAL CRITERIA AND DISQUALIFYING FACTORS - ANALYSIS AND FINDINGS

The Service has no evidence that the permit application should be denied on the basis of the criteria and conditions set forth in 50 CFR 13.21(b)-(c).

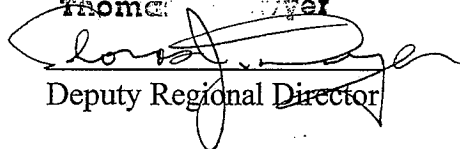
V. RECOMMENDATION ON PERMIT ISSUANCE

Based on the foregoing findings with respect to the proposed action, I recommend approval of the permit for the incidental taking of the Santa Cruz long-toed salamander by Shelter Systems, Incorporated and Lampert Properties at the Seascape Uplands project site in Santa Cruz County, California.


Assistant Regional Director
Southern California Ecoregion

8/15/97
Date

Concur:

~~Thomas J. Meyer~~

Deputy Regional Director

8/18/97
Date

REFERENCES

California Coastal Commission. 1995. Commission notification of final appeal action: Commission Appeal # A-3-SCO-94-45. Record of Commission vote that occurred on January 11, 1995. Santa Cruz, California.

Brady and Associates. 1994. Final Environmental Impact Report, Seascape Uplands. Prepared for County of Santa Cruz, Santa Cruz, California.

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